UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

In re	:	
BRIDGEPORT JAI ALAI, INC., D/B/A SHORELINE STAR GREYHOUND PARK & ENTERTAINMENT COMPLEX,	:	Chapter 11
Debtor.	:	Case No. 96-51183
BRIDGEPORT JAI ALAI, INC.,	:	
Movant,	:	
v.	:	
AUTOTOTE SYSTEMS, INC. AUTOTOTE CORPORATION, and AUTOTOTE ENTERPRISES, INC.,	:	
Respondents.	:	
APPEARANCES:	:	
James G. Verrillo, Esq. Zeisler & Zeisler, P.C. 558 Clinton Avenue Bridgeport, Connecticut 06605	:	Attorney for movant/debtor
David D. Tobin, Esq. Tobin, Carberry, O'Malley, Riley & Selinger, P.C. 43 Broad Street, P.O. Box 58 New London, CT 06320	:	Attorney for respondents

MEMORANDUM AND ORDER ON MOTIONS TO EXERCISE RENEWAL OPTION RIGHTS

Alan H.W. Shiff, United States Bankruptcy Judge:

Pursuant to motions filed on January 30, 2001 and April 27, 2001, Shoreline Star Greyhound Park & Entertainment Complex ("Shoreline"), as successor in interest to the debtor Bridgeport Jai Alai, has moved to exercise an option to renew an agreement with the respondents (collectively, "Autotote"). Autotote objects, claiming that Bridgeport Jai Alai and Shoreline materially breached the agreement, thereby terminating the option.

Background

In an October 29, 1992 agreement (the "Agreement"), the State of Connecticut, as the operator of an off-track betting system (the "OTB System"), granted Bridgeport Jai Alai the right to operate an off-track betting branch until December 2, 1995. On June 30, 1993, Autotote succeeded to Connecticut's interest in the OTB System. On June 2, 1993, in anticipation of that transfer, Autotote entered into an amendment to the Agreement with Bridgeport Jai Alai (the "Amended Agreement"). The Amended Agreement extended the initial term to December 2, 2000 and gave Bridgeport Jai Alai three five year options to renew, provided that it was not "in default [of the Amended Agreement] as of the date of exercise of an option, and that there [were not] more than two *material* defaults during the current term." (Emphasis added).

On July 16, 1996, Bridgeport Jai Alai commenced this chapter 11 case. On December 11, 1997, its chapter 11 plan was confirmed,[1] and on December 29, 1997, the court approved the assumption of the Amended Agreement, *see* 11 U.S.C. § 365 (the "§ 365 Order"). On June 13, 2000, Shoreline, as successor to Bridgeport Jai Alai, sent to Autotote a "notice of exercise of option." Autotote responded that Shoreline had

[1] The court has jurisdiction over the instant motions pursuant to Article X of the confirmed plan.

no right to renew because its predecessor, Bridgeport Jai Alai, had committed more than two material defaults.

There is no dispute that Bridgeport Jai Alai committed numerous preconfirmation material defaults. For example, from November 25, 1995 through May 13, 1996, it did not timely pay invoices for fees issued by Autotote, although did eventually pay all of those invoices prior to the commencement of this case. After May 13, 1996, Bridgeport Jai Alai failed to pay any invoices until the Amended Agreement was assumed and cured on December 29, 1997. In addition, it failed to provide Autotote with financial statements which were required by the Amended Agreement, including quarterly unaudited statements, audited annual statements, and quarterly and annual unaudited supplemental schedules on revenue. Shoreline has paid all postconfirmation invoices in full, but it did not provide Autotote with the financial statements required by the Amended Agreement until April 27, 2001.

On January 30, 2001, Shoreline filed a motion to reopen the December 11, 1997 order confirming the plan and the § 365 Order. The motion requested a clarification that those orders cured all past defaults and, accordingly, Shoreline's option rights were not lost. At a hearing on April 24, 2001, the court agreed that any preconfirmation defaults had been cured, but an evidentiary hearing would be needed to address Autotote's allegations of postconfirmation defaults. Since those allegations went beyond the scope of the motion papers, Shoreline[2] filed a second motion on April 27, 2001 seeking, in addition to the relief initially sought, an order that no material defaults had occurred postconfirmation.

On June 21, 2001, an order entered which was consistent with the court's oral ruling on April 24th, *i.e.*, that any preconfirmation defaults were cured by the confirmation of the plan and the assumption of the Amended Agreement, but an evidentiary hearing was necessary as to whether any postconfirmation material defaults had terminated Shoreline's option rights (the "June 21st Order"). On August 27, 2001, the parties filed a joint motion requesting that the court vacate the June 21st Order, so that there would

[2] The papers were filed by Bridgeport Jai Alai, but since Shoreline succeeded to its interest in the Amended Agreement, Shoreline is the real party in interest.

only be one order for appellate review and the parties could continue settlement discussions. The motion was granted, and on September 25, 2001, the June 21st Order was vacated. In lieu of an evidentiary hearing, the parties filed a stipulation of facts and exhibits on September 23, 2002. *See* Appendix A. After the parties informed the court that settlement negotiations had failed, oral argument was scheduled for January 25, 2005.

Preconfirmation Defaults

Consistent with the June 21st Order, it is concluded that the § 365 Order determined that all preconfirmation defaults, including those which were prepetition, were cured and all rights under the Amended Agreement were restored. Accordingly, the preconfirmation defaults did not terminate Bridgeport Jai Alai's and Shoreline's options. *See* June 21st Order at 2.

Postconfirmation Defaults

Autotote claims that Shoreline was in material default each time it failed to provide the financial statements required by the Amended Agreement. Shoreline counters that none of the failures constituted a *material* default. Shoreline notes that Bridgeport Jai Alai's previous failures to provide the financial statements predated Autotote's involvement, and at no time during the years before this litigation did Autotote ever notify Bridgeport Jai Alai that they considered any such failures to be a default. *See* Stipulation, Appendix A, at ¶ 26. That admission supports Shoreline's argument that Autotote did not consider the financial statements to be material. Indeed, it raises the question of whether Autotote was even aware of the requirement to produce them.

Of greater significance, Autotote did not claim that the failure to produce the financial statements affected the amount of money it was entitled to under the Amended Agreement. The requirement to provide the financial statements was in the Agreement negotiated by the State of Connecticut, which had a regulatory role over the gaming

industry and therefore needed the data. Autotote, however, does not have any regulatory powers. It is therefore concluded that the failures to provide the financial statements were not material defaults and Shoreline has not lost its right to exercise the option to renew the Amended Agreement.

For the foregoing reasons, the motions are granted, and

IT IS SO ORDERED.

Dated at Bridgeport, Connecticut, this 31st day of March, 2005.

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Alan H.W. Shiff
United States Bankruptcy Judge